

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANGELO M. LOVE,

Plaintiff,

v.

SUZANNE M. PEERY, et al.,

Defendants.

No. 2:20-cv-01489-TLN-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

II. Allegations in the Complaint

Following denial of his state habeas petition by the Sacramento County Superior Court, plaintiff filed this civil rights action requesting a court order to allow a plea deal of 5 years and 4

1 months to be extended to him rather than the current sentence he is serving in the custody of the
2 CDCR. As support therefore, plaintiff alleges that the plea deal that he agreed to accept was
3 changed without his knowledge and that his defense attorney was ineffective for not objecting to
4 the new sentence and for not raising a speedy trial violation. ECF No. 1 at 3-5.

5 **III. Legal Standards**

6 A habeas corpus petition pursuant to 28 U.S.C. § 2254 is the correct method for a prisoner
7 to challenge the legality or duration of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th
8 Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 485 (1973)); Advisory Committee Notes
9 to Habeas Rule 1, 1976 Adoption. Insofar as plaintiff challenges the criminal proceedings
10 resulting in his confinement, his claims are not cognizable in this § 1983 action.

11 Second, plaintiff's claims are barred by Heck v. Humphrey, 512 U.S. 477 (1994). The
12 Heck bar preserves the rule that federal challenges, which, if successful, would necessarily imply
13 the invalidity of incarceration or its duration, must be brought by way of petition for writ of
14 habeas corpus, after exhausting appropriate avenues of relief. Muhammad v. Close, 540 U.S.
15 749, 750–751 (2004). Accordingly, “a state prisoner’s [section] 1983 action is barred (absent
16 prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target
17 of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if
18 success in that action would necessarily demonstrate the invalidity of confinement or its
19 duration.” Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005).

20 **IV. Analysis**

21 In this case, it appears to the court that if plaintiff prevails on his claims a judgment in his
22 favor will necessarily imply the invalidity of his conviction and sentence. Consequently,
23 plaintiff’s §1983 action cannot proceed unless and until his conviction is invalidated as required
24 by Heck. Therefore, plaintiff’s complaint will be dismissed. Plaintiff will be granted one
25 opportunity to amend the complaint in order to show that the conviction that is the subject of this
26 action has been invalidated, or any other reason why the Heck bar does not apply.

27 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
28 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.

Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in specific terms how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

V. Plain Language Summary for Pro Se Party

The following information is meant to explain this order in plain English and is not intended as legal advice.

The complaint is being dismissed because you are using the wrong type of case to challenge your criminal conviction. You are being given the chance to try to fix this by filing a first amended complaint. If you choose to do so, pay careful attention to the legal standards explained in this order. If you decide to file a federal habeas petition instead of an amended complaint, you may file a notice to voluntarily dismiss this case.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Plaintiff is granted thirty days from the date of service of this order to file an amended

1 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
2 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
3 number assigned this case and must be labeled "Amended Complaint." Failure to file an
4 amended complaint in accordance with this order will result in a recommendation that this action
5 be dismissed.

6 Dated: December 18, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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